IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 34483 of 2006(E)

PETITIONER:

GOPALAKRISHNAN NAIR, AGED 58,
S/O. N.KRISHNAN NAIR, SREE NILAYAM, VAZHOOR P.O.,
KOTTAYAM.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS:

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1. **THE TRAVANCORE DEVASWOM BOARD,**
   REPRESENTED BY ITS SECRETARY, OFFICE OF THE
   TRAVANCORE DEVASWOM BOARD, NANTHANCODE,
   THIRUVANANTHAPURAM.

2. **THE DEVASWOM COMMISSIONER,**
   OFFICE OF THE TRAVANCORE DEVASWOM BOARD,
   NANTHANCODE, THIRUVANANTHAPURAM.

3. **THE DEVASWOM ACCOUNTS OFFICER,**
   OFFICE OF THE TRAVANCORE DEVASWOM BOARD,
   NANTHANCODE, THIRUVANANTHAPURAM.

BY ADV. SRI.C.VIJAYAN, SC, TDB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

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WP(C).No.34483 OF 2006-E.

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Dated this the 23rd day of January, 2007.

J U D G M E N T

The petitioner retired from the service of the respondent Board while working as Assistant Devaswom Commissioner on 31-1-2003. Against the withholding of DCRG he has filed this writ petition. The date of retirement is very relevant as far as this case is concerned because, the maximum time permitted by the statutory rules to quantify the liability against an employee is three years from the date of retirement. In the counter-affidavit filed by the respondent it is stated that based on Ext.R1(a), an amount of Rs.54,040/- has been fixed as liability against the petitioner, so that amount will be deducted or recovered from the D.C.R.G.

2. Counsel for the petitioner submits that the respondent Board has no sanction of law to recover the above amount from the D.C.R.G. since the liability certificate was issued without notice to him and that the quantification of the liability has been done beyond the time prescribed in Rule 3, Part III of K.S.R.

3. The fact that the petitioner was not issued any

notice and his explanation was not sought for, is not disputed. Counsel for the respondent, however, submits that since Ext.R1(a) is based on an audit report of the Local Fund Special Audit Party, it is not necessary to issue notice to the petitioner before quantifying the liability. According to the respondents, issue of notice in the circumstances will be an idle formality.

4. I am unable to agree with the above contention of the respondents. To take action against the petitioner, it is not enough that pecuniary loss was caused to the respondent. The Board shall establish that there is nexus between the loss and the lapses or breach of rules committed by the petitioner. The petitioner has got the right to take up the contention that no loss has been caused or that the responsibility for the loss, if any, caused shall not be put on his shoulders. Therefore, the respondent cannot recover the amount shown in Ext.R1(a) without affording the petitioner an opportunity of being heard. Since no quantification has been done consistent with the principles of natural justice, the only conclusion that can be legitimately drawn is that no liability has been fixed in accordance with law.

5. It is open to the respondents to issue notice to

the petitioner and quantify the liability. Under normal circumstances, such a freedom has to be conceded to the respondent. But in the peculiar facts of this case, the same cannot be done. Rule 3, Part III of K.S.R. Imposes a duty to fix the liability within three years from the date of retirement. Since that outer time limit has already been crossed, no recovery can be effected. Thus, the resultant position is that, the petitioner is entitled to get back the amount of Rs.54,040/- also from the respondents towards admitted D.C.R.G.

6. Counsel for the respondents submits that the petitioner comes within the frame work of the Public Accountants Act and that the respondents have the authority to proceed against the petitioner under the provisions of the said Act. He also contends that the amount can be recovered by instituting civil proceedings against the petitioner. I do not think it proper to go into those contentions or express any opinion touching the same except to say that this judgment will not stand in the way of taking any action in accordance with law.

7. The only question for consideration is whether the liability certificate issued as per Ext.R1(a) and the action of the respondents to withhold or recover the amount

shown therein from his gratuity under the authority of Rule 3 of Part III of K.S.R. is legally sustainable or not. As already observed by me, the respondents have no authority to proceed to recover the amount of Rs.54,040/- from the petitioner under the above Rule. Therefore, there shall be a direction to the respondent Board to pay Rs.54,040/- also to the petitioner within two months from the date of receipt of a copy of this judgment.

8. I make it clear that in case the respondents would like to have recourse to any other law including the Public Accountants Act, whatever findings have been made here, for the purpose of examining the issue under Rule 3, Part III K.S.R., will not stand in their way to take such action as permitted by law.

The writ petition is disposed of as above.

K.K.DENESAN, JUDGE.

kvs/-